

DOCUMENT RESUME

03794 - [A2794046]

[Claim for Retroactive Promotion with Backpay]. B-189205.
October 3, 1977. 3 pp.

Decision re: Joseph E. Walldorson; by Robert F. Keller, Acting
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Forest Service; Civil Service
Commission.

Authority: 5 C.F.R. 511.603. 5 C.F.R. 511.701 et seq. B-186087
(1976). 55 Comp. Gen. 539. United States v. Testan, 424 U.S.
392 (1976).

An employee appealed denial of his claim for a retroactive promotion with backpay, contending that he occupied a position which should have been classified at a higher grade. The Civil Service Commission has the authority to classify positions; even if the position were reclassified, the employee would not be entitled to backpay. (HTW)

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DECISION



Goddard - Civ. Per
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-189205

DATE: October 3, 1977

MATTER OF: Joseph B. Halldorson - Backpay

DIGEST: GS-9 employee of Forest Service claimed backpay for allegedly working at higher grade, GS-11. Agency reported employee worked within his assigned grade level. Employee is not entitled to backpay since he was not detailed to an established higher level position, with the exception of a period of time for which he has been compensated. Moreover, the Civil Service Commission, not the General Accounting Office, has the authority to classify positions, and even in event of reclassification here, employee would not be entitled to backpay. Testan v. United States, 424 U.S. 392 (1975).

Mr. Joseph B. Halldorson, an employee of the Forest Service, United States Department of Agriculture, has appealed our Claims Division's denial of his claim for a retroactive promotion with backpay.

The record shows that Mr. Halldorson began employment with the Forest Service on August 8, 1971, as a Sanitary (Civil) Engineer, grade GS-9, position numbers 115351/122751. From this date through November 20, 1972, he was classified as in on-the-job training status. Then from November 21, 1972, through May 17, 1973, Mr. Halldorson was placed on detail as a Civil Engineer, grade GS-11, in position number 120351, was given a temporary promotion to that position, and was appropriately compensated for such during this period. On May 18, 1973, he returned to his official designation, grade GS-9, in position numbers 115351/122751 and continued as such through July 11, 1973. From July 12 through August 22, 1973, he was detailed to another grade GS-9 position. On August 23, 1973, he was relieved of duty pending determination of an incapacitating physical condition. As a result of this condition Mr. Halldorson was in a leave-without-pay status from August 30, 1973, through March 17, 1974. He returned to his grade GS-9 duties on March 18, 1974, and was so employed through January 3, 1975, when, after that period, he has been in a leave-without-pay status.

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Mr. Halldorson contends that from July 12, 1972, he has been performing and occupying a position which should have been officially classified at grade GS-11. He further contends that his agency has been using unfair labor practices in having him perform higher grade work at a lower grade of pay. He is therefore claiming backpay for this period of time.

In its report to us on this matter, the Forest Service states that Mr. Halldorson has worked within his assigned grade level of grade GS-9 with the exception of the period of November 21, 1972, to May 17, 1973, when he was detailed and temporarily promoted to a grade GS-11 position for which he was appropriately compensated.

It is not within the jurisdiction of this Office to determine whether a position has been properly classified or described. B-186087, June 1, 1976. Rather, if an employee believes his position is not properly classified, he may appeal his classification to the United States Civil Service Commission. 5 C.F.R. § 511.603 (1977). It should be noted, however, that the Civil Service Commission's regulations for position classification provide that the effective date of a classification action taken by an agency or a classification action resulting from an employee's appeal is the date the action is approved in the agency or the appeal is decided or a date subsequent to that date. See 5 C.F.R. § 511.701 *et seq.* (1977). Accordingly, even if Mr. Halldorson were to succeed in obtaining Commission approval for reclassifying his position to the grade GS-11 level, he would not be entitled to backpay because of the improper classification. See United States v. Testan, 424 U.S. 392 (1976), a case involving the issue of entitlement to backpay for errors in position classification levels in which the Supreme Court held that "neither the Classification Act nor the Back Pay Act creates a substantive right in the respondents to backpay for the period of their claimed wrongful classifications." 424 U.S. at 407.

Moreover, the record shows that Mr. Halldorson was not detailed to an established higher level position, with the exception of the period of time for which he has already been compensated. Therefore our decision in Turner-Caldwell, 55 Comp. Gen. 539 (1975), in which we stated that employees improperly detailed to higher grade positions for more than 120 days are

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entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated, is not applicable.

The Claims Division's denial of Mr. Halldorson's claim is affirmed.


Acting Comptroller General,
of the United States